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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/824,478

04/15/2004

Jean-Yves Legendre

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06/23/2006

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EXAMINER

WALCZAK, DAVID J

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/824,478	Applicant(s) LEGENBRE, JEAN-YVES	
	Examiner David J. Walczak	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-13, 15, 19, 20, 23, 29, 30, 34, 35, 37, 39, 46, 48 and 54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/15/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 5-7, 14, 16-18, 21, 22, 24-28, 31-33, 36, 38, 40-45, 47, 49-53 and 55-59.

DETAILED ACTION

Election of Species

Applicant's election with traverse of Species I in the reply filed on 5/11/06 is acknowledged. The traversal is on the grounds that there is no burden on the Examiner to examine all of the claims. This is not found persuasive because the examination of four different structures and 59 claims is clearly more burdensome than the examination of a single structure and a lesser amount of claims.

The Applicant contends that claims 1-4, 7-13, 15, 19, 20, 23, 29, 30, 34, 35, 37, 39, 46, 48 and 54 are readable on the elected embodiment, however, claims 7 depends from claim 5, which the Applicant has indicated is a non-elected claim. Accordingly, claims 5-7, 14, 16-18, 21, 22, 24-28, 31-33, 36, 38, 40-45, 47, 49-53 and 55-59 are withdrawn from further consideration.

The requirement is still deemed proper and is therefore made FINAL.

Abstract

The abstract of the disclosure is objected to because legal phraseology such as "means" (see line 5) should not be present therein. Correction is required. See MPEP § 608.01(b).

Specification

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The disclosure is objected to because of the following informalities: On line 6 of paragraph 0072, "wall 33" should be --wall 31--. Appropriate correction is required.

Claim Objections

Claim 19 is objected to because of the following informalities: On line 2, "a first side" should be --the first side-- in that the first side of the reservoir has already been defined on line 2 of claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8, 9, 11, 13, 19, 29, 30, 34, 35, 37, 46, 48 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Laub. In regard to claim 1, Laub discloses an applicator for the application of a product comprised of a reservoir 10 having first and second opposing sides with a first side facing a finger when the applicator is mounted on a finger, means 18 to attach the applicator to a finger, an applicator portion 25 on the second side of the reservoir and being isolated from the reservoir prior to a first usage of the device and means 29 to establish communication between the reservoir and the applicator in response to an operating action during the first use of the device. In regard to claim 2, the means to attach the applicator includes a finger stall 18. In regard to

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claims 3 and 4, the means to establish communication includes a membrane 29 which breaks in response to pressure exerted on the first side of the reservoir. In regard to claims 8 and 9, the first side of the reservoir is deformable to thereby establish the communication (see page 2, lines 32-35). In regard to claim 11 the thread-like elements that define the applicator portion 25 (see page 2, lines 13-16) define a "fibrous material". In regard to claim 13, the applicator portion 25 is made from a "resiliently deformable" material. In regard to claim 19, the first side of the reservoir is parallel to the face of the applicator (see Figure 2). In regard to claim 29, the toothpaste in the reservoir is considered a "cosmetic" in that it improves the appearance of the teeth. In regard to claim 30, the applicator is attached to a single finger via attachment means 18. In regard to claims 34, 35, 46 and 48, as discussed supra, the Laub device includes an cosmetic applicator attached to a single finger and comprised of a reservoir, applicator portion, attachment arrangement and a breakable membrane to establish communication as claimed. In regard to claim 37, the reservoir is positioned between the finger and the applicator. In regard to claim 54, the first surface of the reservoir has a convex shape (see Figure 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laub. Although the front of the applicator portion does not have a circular shape, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that that applicator portion can be designed to have any suitable shape, including the claimed shape, without effecting the overall operation of the device.

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laub in view of Shimizu. Although the Laub reference does not disclose that the applicator portion can be made from a porous material or a thermoplastic foam material, attention is directed to the Shimizu reference, which discloses another toothbrush wherein the applicator portion is made from a porous thermoplastic foam (see column 2, lines 42-44) in order to enable a user to both clean the teeth and massage the gums in an effective manner (see column 1, lines 1-28). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the bristles on the Laub device with a foam type applicator, as disclosed by Shimizu, in order to enable a user to effectively clean teeth as well as message the gums.

Claims 15, 23 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laub in view of MacDonald. Although the Laub device employs a finger stall to attach the device to a finger, and not an adhesive with a removable film, attention is directed to the MacDonald reference, which discloses another finger attached toothbrush wherein an adhesive 16 protected by a removable film 22 is employed to attach the device to a finger. Such an arrangement renders the device to be easily

packaged and opened (see column 1, lines 1-22). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such an adhesive (which obviously would be hypoallergenic since it is to be placed in a users mouth) to attach the Laub device to a finger (as opposed to the stall) in order to render that device to be easily packaged and opened.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Micciche and Welker reference are cited for disclosing other finger attached applicators.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
6/21/06